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W. Mark C. Weidemaier

University of North Carolina School of Law, weidemaier@unc.edu

Matt Gauthier

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Publication: *Capital Markets Law Journal*

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Venezuela as a case study in limited (sovereign) liability

W. Mark C. Weidemaier and Matt Gauthier*

Key points

- Venezuela is in a severe economic crisis, prompting speculation about default by the government or beleaguered state-owned oil company Petróleos de Venezuela, S.A. (PDVSA).
- Because the country's economy is heavily dependent on oil exports, some observers have speculated that it faces a unique risk of holdout litigation by creditors seeking to attach oil-related assets.
- This essay highlights barriers to such litigation, which will be familiar to corporate lawyers but are often overlooked in discussions of sovereign debt. These barriers derive from corporate law principles of limited liability.
- Using Venezuela as a case study, this essay explores how principles of limited liability shape the dynamic between a sovereign debtor and its creditors and highlights some unusual aspects of these principles as applied to entities owned or controlled by foreign governments.

1. Introduction

Venezuela is in a severe economic crisis. An October 2016 debt swap bought some time for beleaguered state-owned oil company Petróleos de Venezuela, S.A. (PDVSA), but there remains speculation about default by both PDVSA and the government.¹ Default would invite comparisons to the case of Argentina. Like that country, Venezuela has issued bonds governed by New York law and accepted the jurisdiction of New York courts. Some Venezuelan bonds also include the same *pari passu* clause used by Argentina, which holdout creditors used to extract a preferential settlement.² The Venezuelan economy, moreover, is largely dependent on oil exports. A default by either the government or PDVSA would prompt creditors to try to seize oil-related assets, such as rights to payment for oil shipments. In short, Venezuela, like Argentina, may prove a tempting target for litigation by holdout creditors.

In this article, we explore some of the legal considerations that would govern such litigation. We do not address the *pari passu* clause, which has been covered at length elsewhere.³ Nor do we address prospects for a successful restructuring, although we

* Weidemaier is an Associate Professor and Ralph M. Stockton, Jr Distinguished Scholar at the University of North Carolina School of Law, and Gauthier is a second-year law student at the University of North Carolina School of Law

1 See eg J Wheatley and others, 'Venezuela: A Nation in Bondage' *Financial Times* (London, 10 November 2016).

2 E Carletti and others, 'Pricing Contract Terms in a Crisis: Venezuelan Bonds in 2016', (2016) 11(4) *Cap Mkts L J* 540. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2794509>.

3 See eg WMC Weidemaier and A Gelpern, 'Injunctions in Sovereign Debt Litigation' (2014) 31 *Yale J Reg* 189.

concede that Venezuela has options not available to Argentina.⁴ Instead, our goal is to address speculation that, because the Venezuelan economy depends so heavily on oil revenues, the country is uniquely susceptible to litigation by holdout creditors, who could position themselves to seize oil-related assets. We emphasize barriers to such litigation, which will be familiar to corporate lawyers but are often overlooked in discussions of sovereign debt. For instance, PDVSA does not own its hydrocarbon reserves; these belong to Venezuela. To frustrate PDVSA's creditors, the government might transfer exploitation rights to a new entity.⁵ Moreover, neither the government nor PDVSA directly own oil-related assets outside of Venezuela. Instead, they own shares in other entities, which directly or indirectly control foreign oil assets. To get at these assets, creditors of Venezuela and PDVSA will have to overcome the barrier posed by the corporate law doctrine of limited liability.

We do not purport to predict the outcome of any disputes that might arise in the wake of a default, nor do we consider the many questions that would be raised by a bankruptcy proceeding involving PDVSA or its subsidiaries. Instead, using Venezuela as a case study, we explore how questions of limited liability can affect the relative rights and bargaining power of a sovereign debtor and its creditors. We also highlight some unusual aspects of limited liability rules as applied to entities owned or controlled by foreign governments. For instance, the doctrine of 'piercing the corporate veil'—often maligned as incoherent and unprincipled by corporate law scholars—is particularly ill-suited for cases in which a corporation is owned by a foreign government.

2. The limits of limited liability

Accounts of sovereign debt litigation often overemphasize the law of sovereign immunity. In fact, however, most sovereign bonds issued in foreign markets (including bonds issued by Venezuela and PDVSA) include a waiver of sovereign immunity. Yet even when sovereign immunity is not a factor, creditors will find that many of the most tempting assets belong to legally separate entities. Under the doctrine of limited liability, shareholders are not personally liable for debts of the firm except to the extent their own conduct provides a basis for liability.⁶ Likewise, although a judgment creditor may attach corporate shares owned by the debtor, it may not proceed directly against the corporation or its assets. The principle of limited liability also has exceptions, under which a firm's creditors may impose liability or enforce judgments against the firm's shareholders, or against its parent or affiliate corporations. For simplicity, we refer to these exceptions as 'veil piercing' doctrines, although we concede that the label obscures a great deal of legal

4 Argentina could not restructure its debt without the consent of each bondholder. See WMC Weidemaier, 'Sovereign Debt after *NML v Argentina*' (2013) 8 Cap Mkts L J 123. Venezuela and PDVSA each have some ability to bind dissenting creditors to the terms of a restructuring. Most outstanding Venezuelan bonds have collective action clauses. See Carletti and others (n 2). PDVSA and its subsidiaries (unlike sovereign nations) can seek bankruptcy relief.

5 This possibility was raised most recently in a proposal by economist Ricardo Hausmann (Harvard) Mark Walker (of Millstein & Co).

6 See eg Model Business Corporation Act s 6.22 (2006).

complexity.⁷ Again, our goal is only to highlight the range of disputes that might raise issues of limited liability in the context of a default by Venezuela or PDVSA.

Veil-piercing doctrine, its critics and the problem of sovereign shareholders

At first glance, the law of veil piercing is straightforward and consistent across jurisdictions (at least in the USA). Courts pierce the corporate veil and dispense with the presumption of limited liability when (1) the owner exercises complete domination over the corporation (often called the ‘alter ego’ or ‘mere instrumentality’ test) and (2) uses that control to perpetrate a fraud or injustice (as when a shareholder siphons assets away from the firm and its creditors).⁸ This apparent simplicity, however, quickly breaks down. On occasion, the two parts of this test are phrased disjunctively, so that a creditor may pierce the veil upon showing *either* control or fraud.⁹ Moreover, courts often analyse veil-piercing questions by invoking a laundry list of factors. These include (among many others):¹⁰

- undercapitalization;
- commingling of corporate and personal assets;
- failure to observe corporate formalities;
- failure to pay dividends;
- siphoning of corporate funds;
- failure to keep corporate records;
- the corporation’s payment of the shareholder’s personal obligations; and
- the shareholder’s use of the corporate form to pursue personal objectives.

Given this laundry list of factors, it is perhaps no surprise that the law of veil piercing has been criticized as incoherent.¹¹ Most notably, many of the factors invoked in veil-piercing analysis have no obvious relevance to the reasons for recognizing limited liability in the first place.¹² These include facilitating efficient risk bearing and monitoring by capital markets, enabling investor diversification,¹³ increasing liquidity¹⁴ and encouraging an appropriate level of risk-taking by firms engaged in economic activity. It is not obvious

7 As examples of the doctrinal possibilities and complexity: the term ‘veil piercing’ may be viewed as most appropriate in circumstances where the shareholder is a natural person, while ‘enterprise liability’ theories also allow creditors to reach assets of parent and affiliate corporations engaged in a common business enterprise. See eg SM Bainbridge, ‘Abolishing Veil Piercing’ (2000) 26 J Corp Law 479. In ‘reverse’ veil piercing cases, creditors seek to impose liability on a corporation for the obligations of its shareholder. Agency law may in some cases also provide a basis for imputing a subsidiary’s liability to a parent.

8 SB Presser, *Piercing the Corporate Veil* s 1:1 (2016).

9 See eg *First National City Bank v Banco Para el Comercio Exterior de Cuba* (1983) 462 US 611 [hereinafter *Bancec*]; *Carte Blanche Singapore v Diners Club Int’l* 2 F 3d 24 (2nd Cir 1993).

10 RB Thompson, ‘Piercing the Veil within Corporate Groups: Corporate Shareholders as Mere Investors’ (1989) 13 Conn J Int’l L 379.

11 See eg Bainbridge (n 7). This does not necessarily mean there is no order in the cases. See J Macey and J Mitts, ‘Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil’ (2014) 100 Cornell L Rev 99 (arguing that courts pierce the veil to achieve the purpose of a statute or regulation, to prevent shareholders from obtaining credit by misrepresentation, and to promote values associated with bankruptcy).

12 PB Oh, ‘Veil-Piercing Unbound’ (2013) 93 Boston Univ L Rev 89, 90.

13 Bainbridge (n 7).

14 FH Easterbrook and DR Fischel, *The Economic Structure of Corporate Law* (Harvard UP 1991).

why it advances these goals, say, to impose personal liability on a shareholder who has failed to observe corporate formalities.¹⁵

Veil-piercing doctrine has been most heavily criticized in the field of corporate law. But the doctrine is especially incoherent when applied to entities owned or controlled by foreign sovereigns. Consider just three examples. First, much of the theory underlying the doctrine of limited liability applies weakly, if at all, to such entities. Why would the State of New York, for instance, care whether an entity wholly owned by a foreign government has sufficient access to liquidity? Secondly, veil-piercing doctrine can border on the nonsensical when applied to government-owned corporations. What could it mean, for instance, to say that a foreign government has inappropriately used the corporate form to pursue its own objectives? Governments create and control corporations precisely to accomplish policy objectives. Thirdly, the doctrine of limited liability exists to insulate shareholder assets from creditors of the corporation. But when the shareholder is a foreign government, the law of sovereign immunity already gives it analogous (if not completely overlapping) protection.¹⁶ Creditors who want more robust rights against shareholders must contract for them *ex ante*.¹⁷

Although the topic is beyond the scope of this short essay, it is fair to say that the doctrine of limited liability, and the exceptions we have loosely grouped under the ‘veil piercing’ rubric, are ill-suited to scenarios involving entities owned or controlled by foreign governments. For present purposes, it may be enough to say that comity and reciprocity are more important considerations in this context. If nothing else, courts in the USA should respect the separate legal status of entities owned or controlled by foreign governments so that foreign courts do not casually disregard the boundaries between US firms operating abroad,¹⁸ or between the US government and the instrumentalities through which it pursues its policy objectives.

Veil piercing for sovereign-owned corporations

Although ill suited, the doctrine of veil piercing has been imported almost wholesale from corporate law into the context of state-owned or controlled enterprises. In *First National City Bank v Banco Para el Comercio Exterior de Cuba* [Bancec], the US Supreme Court established a presumption that ‘when government instrumentalities [are] established as

15 See eg Bainbridge (n 7) 43.

16 This is especially true in the USA, where creditors of a sovereign may only reach property used for a commercial activity in the USA if the property ‘is or was used for the commercial activity upon which the claim is based’. See 28 USC s 1610. Assume, for instance, that a creditor of a state-owned enterprise engaged in commercial activity in the USA succeeded in piercing the corporate veil and imposing liability on the foreign state. The creditor could attach state-owned property in the USA only by showing the requisite nexus between the property and the commercial activity, giving rise to its claim. In many cases, the only such assets would be those belonging to the corporation.

17 For instance, a private shareholder might agree to guarantee corporate debts. When the shareholder is a foreign government, it would also have to waive its immunity from suit and execution. With a waiver of execution immunity, a creditor can seize a wider range of commercial assets located in the USA. See 28 USC s 1610(a)(1).

18 See eg HR Rep No 1487, 94th Cong, 2nd Sess (1976), 29–30; *DRC, Inc v Republic of Honduras*, 71 F Supp 3d 201, 209 (DDC 2014). To be sure, this objective also supports limited liability in the context of firms owned or controlled by foreign *private* shareholders. The distinction is that, in the sovereign context, the desire to protect US firms operating abroad is a central justification for limited liability.

juridical entities distinct and independent from their sovereign [they] should normally be treated as such'.¹⁹ A creditor can pierce the veil only by showing that 'a corporate entity is so extensively controlled by its owner that relationship of principal and agent is created' or that maintaining the presumption of limited liability would 'work fraud or injustice'.²⁰

As in the corporate law context, courts invoke a laundry list of factors in determining whether a sovereign exercises sufficient control to justify veil piercing. These include whether the foreign sovereign:

- (1) uses the instrumentality's property as its own; (2) ignores the instrumentality's separate status or ordinary corporate formalities; (3) deprives the instrumentality of the independence from close political control that is generally enjoyed by government agencies; (4) requires the instrumentality to obtain approvals for ordinary business decisions from a political actor; and (5) issues policies or directives that cause the instrumentality to act directly on behalf of the sovereign state.²¹

Another list of factors shapes the inquiry into fraud and injustice. These include: using the corporate form to commit illegal acts, 'misusing' the corporate form, and siphoning assets or otherwise manipulating the corporate form to thwart creditors.²²

3. Piercing the Venezuelan veil

Creditors seeking to enforce claims against Venezuela or PDVSA will invariably encounter issues of limited liability. Although PDVSA is wholly owned by the government of Venezuela, its creditors cannot pursue government assets without piercing the corporate veil. Nor can the government's creditors attempt to enforce their claims directly against PDVSA or its assets.²³ Moreover, to the extent either borrower controls assets abroad, they do so primarily through ownership interests in legally separate entities. PDVSA, for instance, is the ultimate corporate parent of CITGO Petroleum Corporation (CITGO), the primary operator of PDVSA's oil business in the USA. Although CITGO's assets might offer a tempting target for creditors, there are multiple corporate layers between it and PDVSA (or Venezuela). CITGO is a wholly owned subsidiary of CITGO Holding Inc., which in turn is a subsidiary of PDV Holding Inc., which is wholly owned by PDVSA. A creditor of PDVSA (or, for that matter, Venezuela) could reach CITGO assets only by overcoming the barrier posed by limited liability.²⁴

In the sections below, we briefly identify some of the veil-piercing issues that might arise in connection with efforts to enforce claims against Venezuela or PDVSA. To reiterate, we use the term 'veil piercing' to encompass a range of distinct but conceptually related doctrines (eg 'alter ego' liability, enterprise liability). Thus, we

19 *Bancec* (n 9) 627.

20 *ibid* 629.

21 *Kirschenbaum v 650 Fifth Ave and Related Properties*, 830 F 3d 107 (2nd Cir 2016).

22 *Bridas SAPIC v Government of Turkmenistan*, 447 F 3d 411, 416–20 (5th Cir 2006).

23 For guaranteed debt, of course, creditors may seek to recover directly from the guarantor. As an example, much of PDVSA's debt is guaranteed by PDVSA Petróleo, SA.

24 See eg *Las Palmas Assoc v Las Palmas Center Assoc*, 235 Cal App 3d 1220 (1991).

sacrifice a degree of conceptual clarity in order to concisely describe several plausible scenarios in which creditors might encounter the barrier of limited liability.

‘Simple’ veil piercing: PDVSA and Venezuela

To begin, it may help to consider the circumstances under which a creditor might try to impose PDVSA’s liabilities on the government of Venezuela, or vice versa. (The latter scenario, in which the shareholder’s debts are imposed on the firm, is sometimes called ‘reverse’ veil piercing.) The practical impact of veil piercing in this context would be limited by the fact that both the government and PDVSA have assets primarily in Venezuela. In addition, to the extent PDVSA’s assets in Venezuela are used to provide a public service, the government may block creditors from attaching the assets.²⁵ However, it is plausible to assume that creditors of each entity would derive some benefit from a decision to disregard the legal boundaries between PDVSA and the Venezuelan government. If nothing else, such a decision would expand the range of assets potentially available to satisfy creditor claims.²⁶

Even if we were inclined to offer an opinion on the merits of piercing the PDVSA corporate veil, the public information available is too limited for that purpose. As noted, PDVSA is wholly owned by the government. Its Board of Directors is directly appointed by the President of Venezuela,²⁷ the Minister of Energy and Petroleum has traditionally been its president,²⁸ and several members of its current board are government officials. Control over the board necessarily confers opportunities to control PDVSA’s corporate actions. The government also controls some aspects of PDVSA’s pricing decisions; for instance, it sets prices for gasoline, diesel and natural gas sold domestically.²⁹ In addition, PDVSA is expected to make sizeable contributions to Venezuelan social programmes, including the Fondo de Desarrollo Nacional, an entity created to finance and manage public health, education and welfare projects. These contributions have increased in amount despite plummeting oil prices and a general deterioration in PDVSA’s financial position.³⁰

Recently, the government has increased the role of the military in Venezuelan natural resources projects. In 2016, the government created the *Compañía Anónima Militar de Industriales Mineras, Petrolíferas, y de Gas* (CAMIMPEG), an entity within the ministry of defence with the purpose of undertaking activities relating to oil services, gas and mining.³¹ The government’s reasons for creating CAMIMPEG are unclear, but it is conceivable that some PDVSA assets might be transferred to CAMIMPEG.

25 art 97, Law of the Office of the Attorney General of Venezuela (*Ley Orgánica de la Procuraduría General de la República*).

26 For instance, if PDVSA’s creditors can enforce claims against government assets, this will complicate the government’s efforts to engage in foreign commercial or financial transactions until claims against PDVSA are resolved.

27 *Offering Circular: Offers to Exchange*, Petróleos de Venezuela, SA (16 September 2016) 3 <<https://www.scribd.com/document/324333858/PDVSA-2017-into-2020-Exchange-Offer-OC-16-September-2016>> accessed 1 February 2017. [hereinafter *Offering Circular*].

28 The role is now filled by Eulogio Del Pino.

29 *Offering Circular* (n 27) 26.

30 *ibid* 61.

31 *ibid* 6.

Although these facts reveal that Venezuela exercises significant control over PDVSA and some aspects of its operations, they do not clearly make out a case for veil piercing. Close working relationships and closely aligned interests typify all relationships between governments and government instrumentalities.³² That the government owns 100 per cent of PDVSA and appoints its board does not demonstrate the required degree of control.³³ Instead, a creditor must show that the government exercises substantial control over day-to-day operations.³⁴ The question is whether the government dominates PDVSA's day-to-day operations to such an extent "that a relationship of principal and agent is created."³⁵ As an example, one case found a corporation to be the 'alter ego' of a foreign government where, among other indicia of control, the government insisted on approving any shipment over \$13,000 in value and any check in excess of \$25,000 had to be signed by a government official.³⁶

As an alternative to a showing of control, a creditor might argue that piercing the corporate veil is necessary 'to prevent fraud or injustice'.³⁷ As an example, consider cases in which a foreign government conducts transactions through a corporate shell, or siphons assets from a corporation for the purpose of keeping them out of the reach of creditors. To be sure, the limited public information reveals some facts that might support such an argument, including the use of PDVSA funds to support other government priorities (while PDVSA's economic position was deteriorating), the setting of artificially low domestic prices (ie making PDVSA subsidize domestic consumption) and the creation of CAMIMPEG (if PDVSA assets are transferred to that entity). At present, however, the facts do not obviously resemble other cases in which courts have pierced the corporate veil of a state-owned enterprise. For instance, in *Bridas SAPIC v Government of Turkmenistan*,³⁸ a foreign creditor initiated an arbitration proceeding against an entity wholly owned by the Government of Turkmenistan. The parties had been involved in a joint venture to develop oil and gas reserves. In response to the arbitration, the government dissolved the state-owned entity, replaced it with another, and decreed that all proceeds from oil and gas exports were to be placed in a special fund whose assets were immune from seizure. As the court noted: 'Intentionally bleeding a subsidiary to thwart creditors is a classic ground for piercing the corporate veil.'³⁹

We close this section by noting that questions of sovereign immunity—while often overemphasized in the sovereign debt context—are not irrelevant when liability is premised on a veil-piercing theory. For instance, although both Venezuela and PDVSA have waived sovereign immunity, the waivers extend only to lawsuits brought in

32 *Minpeco, SA v Hunt*, 686 F Supp 427, 437 (1988).

33 See eg *Foremost-McKesson v Islamic Republic of Iran*, 905 F 2d 438, 448 (DC Cir 1990); *Hercaire v Argentina*, 821 F 2d 559, 564–65 (11th Cir 1987).

34 *General Star Nat Ins v Administratia Asigurarilor*, 713 F Supp 2d 267 (SDNY 2010).

35 *Bancec* (n 9) 629 (quotation omitted).

36 *Kalamazoo Spice Extraction Co v Provisional Military Government of Socialist Ethiopia*, 616 F Supp 660 (WD Mich 1985).

37 *General Star* (n 34) 284.

38 See n 22.

39 *ibid* 420.

connection with the relevant notes or indenture. Thus, if a creditor of PDVSA successfully argued for imposing liability on Venezuela, it would have to find another basis for overcoming the government's sovereign immunity in foreign courts. In such a case, one possibility would be for the court to impute PDVSA's waiver of sovereign immunity to the government. Failing that, the creditor would have to rely on the baseline exceptions to sovereign immunity in the Foreign Sovereign Immunities Act.⁴⁰

Diverting assets away from PDVSA

In this section, we discuss scenarios in which Venezuela strips PDVSA of assets that might make it an attractive target for creditors. The most salient possibility—already proposed by Ricardo Hausmann and Mark Walker—is for Venezuela to withdraw PDVSA's monopoly over exploiting hydrocarbon reserves. For obvious reasons, this step would severely impair PDVSA's ability to satisfy creditor claims and provide a much stronger legal basis for piercing the corporate veil. As noted, 'intentionally bleeding' a corporation for the purpose of keeping assets away from creditors is a classic ground for veil piercing.⁴¹ Whether or not the government controls PDVSA's day-to-day operations, it might incur liability to PDVSA's creditors by stripping assets in this manner. (This is independent of any liability that might be imposed on any new entity empowered to exploit hydrocarbon reserves, which would arguably be the beneficiary of a fraudulent transfer of assets.)

From the government's perspective, this may be a risk worth taking. Because the government can shelter many assets within its borders, PDVSA's creditors will have a hard time finding attachable government assets. On the other hand, the government may find PDVSA's creditors to be a thorn in its side. For claims arising from its own bond debt, the government can at least hope that collective action clauses will allow it to impose restructuring terms on dissenting creditors. These clauses cannot help it resolve claims asserted by creditors of PDVSA. And as Argentina's experience illustrates, motivated judgment creditors can disrupt a wide range of transactions that a government might wish to undertake outside its borders.

Assets belonging to PDVSA subsidiaries

Finally, we consider whether creditors of PDVSA or Venezuela might succeed in attaching shares in, or assets belonging to, entities that conduct Venezuela's natural resource operations abroad. (Implicitly, our analysis also covers the scenario in which creditors of these entities seek to pin liability on PDVSA or Venezuela, although in that case sovereign immunity would pose an additional barrier.) For instance, creditors might try to attach physical assets or contract rights (eg rights to payment) belonging to CITGO. To the extent these assets have already been pledged as security for loans, they might have little value to a judgment creditor.⁴² Still, the ability to attach productive

40 See eg 28 USC ss 1605 and 1710.

41 See *Bridas* (n 22) 420.

42 For example, PDVSA's recent exchange offer was secured by a first lien on 50.1% of the capital stock of CITGO Holding, Inc.

assets in the USA might provide additional leverage to creditors in disputes with PDVSA and Venezuela.

Piercing the corporate veil in this context may prove difficult. To illustrate, consider the relationship between PDVSA and CITGO. Through its ownership of PDV Holding, PDVSA (and, ultimately, the Venezuelan government) indirectly controls the board of directors of CITGO Holding and can indirectly control the selection of senior management.⁴³ Historically, PDVSA and its affiliates have also maintained close commercial ties to CITGO, supplying a significant portion (over one-third) of CITGO's crude oil requirements.⁴⁴ By themselves, these facts come nowhere close to the level of control over day-to-day operations necessary to impose liability on these affiliates.

Additional facts related to veil piercing, however, stem from loans taken by CITGO Holding in 2015, the proceeds of which were apparently paid as a dividend to Venezuela.⁴⁵ Creditors have alleged that this loan represented a scheme orchestrated by PDVSA and the Venezuelan government to divert CITGO assets into Venezuelan coffers.⁴⁶ Thus far, these allegations have primarily surfaced in litigation alleging fraudulent transfer claims against PDVSA and other entities.⁴⁷ For our purposes, however, it is worth noting that the degree of control (allegedly) exercised by Venezuela and PDVSA over the US-based entities would make veil-piercing claims more credible.

4. Conclusion

The law governing limited liability and its exceptions is complex, and we have barely scratched the surface. Nor have we even begun to discuss many other issues that would impact creditors' efforts to enforce claims against Venezuela or PDVSA. These include the law of sovereign immunity and the potential for PDVSA and its subsidiaries to seek to resolve their debts in bankruptcy proceedings (both within and outside of Venezuela). The fact that Venezuela's economy is so heavily dependent on exports has led some observers to assume that creditors can easily seize assets associated with natural resource exploitation.⁴⁸ Our main point is that matters are not so simple.⁴⁹ The doctrine of limited liability is one of many bodies of law (and transactional structures⁵⁰) that will constrain creditor enforcement options.

43 *Offering Circular* (n 27) A-29.

44 *ibid* A-22.

45 See eg *Crystallex Int'l Corp v Petróleos de Venezuela, SA*, No 15-1082-LPS, 2016 WL 5724777 (30 September 2016).

46 *ibid*.

47 *ibid*.

48 See eg 'Venezuela: Bonds and Barrels' *Financial Times* (London, 7 January 2015).

49 For more nuanced assessments, see J Dizard, 'How to Value (Worthless) Venezuelan Oil Bonds' *Financial Times* (23 September 2016), and N Maurer, 'Can Venezuela's Creditors Grab Venezuelan Assets in a Default' (*The Power and the Money*, 22 January 2015) <<http://noelmaurer.typepad.com>> accessed 1 February 2017.

50 As a simple example, transferring title to oil to a buyer at a Venezuelan export terminal may prevent creditors of Venezuela from attaching the oil.